

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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CARLOS SMITH PITTERSON,

Petitioner,

22 CIVIL 6456 (JSR)

-against-

JUDGMENT

UNITED STATES OF AMERICA

Respondent.

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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons set forth in the Court's Order dated September 19, 2023, after reviewing the Report and Recommendation de novo, the Court overrules Pitterson's objections, adopts the Report and Recommendation, and denies the petition with prejudice. For the reasons stated in the Report and Recommendation, the Court agrees with the magistrate judge's analysis that "Pitterson's counsel's decision was an objectively reasonable one" and, in any event, "Pitterson has not shown that there is a reasonable probability that, if this defense had been raised, the result of the proceeding would have been different." ECF No. 14, at 9 & n.7. The Court also rejects Pitterson's sentencing and jurisdictional arguments, see ECF No. 16, as meritless. On September 11, 2023, the Court received a second follow-up petition challenging the Court's subject matter jurisdiction. The Court denies that petition with prejudice as untimely, duplicative, and frivolous. In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. Moreover, the Court certifies that any appeal from this Order would not be taken in good faith, as petitioner's claim lacks any arguable basis in law or fact, and therefore permission to proceed in

forma pauperis is also denied. See 28 U.S.C. § 1915 (a) (3); Neitzke v. Williams, 490 U.S. 319, 325 (1989).

Dated: New York, New York

September 19, 2023

RUBY J. KRAJICK
Clerk of Court

BY:



Deputy Clerk